EVIDENCE – DISCOVERY – *BRADY* – Materiality – Scope – *Brady* requires disclosure of exculpatory and impeachment evidence .....Revised 11/2009

The prosecution has an affirmative duty to disclose to the defense any exculpatory evidence – that is, evidence that is material to the questions of guilt or punishment. *Brady v. Maryland,* 373 U.S. 83, 87 (1963). Impeachment evidence is included within the scope of *Brady* materials**.** *United States v. Bagley,* 473 U.S. 667, 676 (1985). The United States Supreme Court has rejected any distinction between impeachment evidence and exculpatory evidence as far as the prosecution's duty to disclose evidence and the results of a failure to disclose. *Id.* It violates the Constitution if the defendant is deprived of either exculpatory or impeachment evidence and thereby deprived of a fair trial. *Id*. at 678. While impeachment evidence has a different purpose than exculpatory evidence, impeachment evidence is still "evidence favorable to an accused," such that, if the evidence is disclosed and used effectively, it can make the difference between a guilty verdict and an acquittal. *See State ex rel. Romley v. Superior Court,* 172 Ariz. 232, 239, 836 P.2d 445, 452 (1992) (citing *Bagley,* 473 U.S. at 676); *see also Giglio v. United States,* 405 U.S. 150 (1972).

Under *Brady*'s requirement that the prosecution disclose exculpatory information, the State must disclose to the defendant all of the prior felony convictions of any witnesses the State will call at trial. *State v. Spears,* 184 Ariz. 277, 287, 908 P.2d 1062, 1072 (1996). But the State has no constitutional duty under *Brady* to disclose a witness who will give *incriminating* testimony. *State v. Tucker,* 157 Ariz. 433, 438, 759 P.2d 579, 584 (1988). Rule 15.1(b)(1), Ariz. R. Crim. P., however, requires the prosecution to disclose the names and addresses of *all* witnesses whom the prosecution intends to call in the case-in-chief. Failure to disclose *inculpatory* evidence is not a *Brady* violation. *See State v. Bracy,* 145 Ariz. 520, 527, 703 P.2d 464, 471 (1985) (citing *United States v. Agurs,* 427 U.S. 97

(1976)).

The Constitution does not require the prosecutor to disclose everything that might conceivably influence the jury's verdict. *See Agurs,* 427 U.S. at 108-09. "[T]he prosecutor is not required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial." *Bagley,* 473 U.S. at 675. *See also Arizona v. Youngblood,* 488 U.S. 51, 55 (1988); *Moore v. Illinois,* 408 U.S. 786, 795 (1972) ("We know of no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case."). As Justice Blackmun stated in *Bagley,* "a rule that the prosecutor commits error by *any* failure to disclose evidence favorable to the accused, no matter how insignificant, would impose an impossible burden on the prosecutor and undermine the interest in the finality of judgments." 473 U.S. at 675 n.7 (emphasis added).